



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2006

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 368  
Houston, Texas 77001-0368

OR2006-06018

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 250921.

The City of Houston (the "city") received a request for the requestor's personnel file, including his application. You state that some of the requested information will be released. You indicate that the submitted information may be excepted under sections 552.101, 552.108, 552.130, or 552.147 of the Government Code, but take no position as to whether this information is excepted under any of these sections. We have reviewed the submitted information. We have also considered comments submitted by the Department of the Navy (the "navy"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This office has concluded that the Privacy Act does not apply to records held by an agency of this state or its political subdivision. Attorney General Opinion MW-95 at 6 (1979) (neither FOIA nor federal Privacy Act is applicable to Texas law enforcement agency). However, this office has repeatedly held that the transfer of information between state agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 272 (1981), 183 (1978). In Open Records Decision No. 561 (1979), in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we held the following:

when information in the possession of a federal agency is “deemed confidential” by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [the predecessor to section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law.

ORD No. 561 at 6.

The Houston Police Department acquired the submitted documents from the Naval Criminal Investigative Service (the “NCIS”). The navy asserts that this information is “part of the [NCIS] investigative files system which is exempt from various provisions of the Privacy Act[.]” Based on the representations and arguments submitted by the navy, we conclude that the submitted information is confidential under the Privacy Act; therefore, the city must withhold the submitted information pursuant to section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

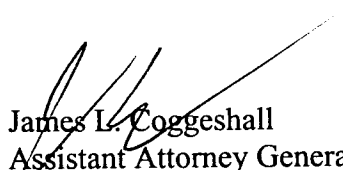
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 250921

Enc. Submitted documents

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